

Market Process Terms and Conditions

Commercial in Confidence

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1 INTRODUCTION

This document provides the framework with respect to the Market Process for the Project.

To submit a Response to the Market Process, please compile and complete your response in the form of the Returnable Schedule.

Landcom shall notify all Respondents of the Next Stage once Landcom has Evaluated all the Responses received.

2 DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this document:

Acceptance Date means the date that is 12 calendar months after the Closing Time, as extended under clause 14(b).

Business Day means a day on which trading banks, or a majority of them, are open for business in Sydney, excluding Saturdays, Sundays, public holidays and the days between 23 December and 2 January (inclusive).

Claim includes a claim, notice, demand, action, proceeding, litigation, investigation or judgment however arising, whether present or future, actual or contingent, and whether involving a third party or a party to this document.

Closing Time means the particulars shown in the corresponding field in the Key Information and as extended under clause 14(a).

Confidentiality Deed Poll means the deed poll, if required by Landcom, to be completed, executed and delivered by the Respondent before being given this document or any similar document.

Conflict of Interest means where any person or company's prior or current relationship or connection with Landcom, Landcom's Consultants, Landcom's Lawyer and/or Landcom's Personnel:

- (a) will;
- (b) may potentially; or
- (c) may be perceived to,

provide a Respondent or a Response with an unfair advantage, either directly or indirectly.

Control has the same meaning as defined in the *Corporations Act 2001* (Cth).

Consultants includes consultants, contractors, subcontractors, agents and advisers.

Data Room means the online facility relating to the Project.

Deposit means the particulars shown in the corresponding field in the Key Information.

Deposit Payment Method means the particulars shown in the corresponding field in the Key Information.

Development Partner means the particulars shown in the corresponding field in the Key Information.

Disclosure Material means the information and reports made available to Respondents in relation to the Market Process including via the Data room.

Evaluation means the evaluation and assessment of a Response under clause 8.1(a). **Evaluate** has the same meaning.

Evaluation Criteria means the criteria set out in the section entitled "Evaluation Criteria" in the Information Memorandum.

Evaluation Plan means the framework to carry out the evaluation of the Responses against the Evaluation Criteria.

Excluded Individual means all individuals listed in the Data Room or otherwise provided to a Respondent (as amended from time to time) for the purpose of clause 12.2(a).

Excluded List means the list which lists all Excluded Individuals and Landcom's Consultants.

Government Authority means:

- (a) the federal government of Australia, or the government of any State or Territory in Australia;
- (b) any government department, statutory body or organisation of the federal government of Australia, or the government of any State or Territory in Australia.

Information Memorandum means the information memorandum issued with respect of the Project.

Key Information means the section entitled "Key Information" in the Information Memorandum.

Key Personnel means the Respondent's key personnel disclosed in its Response.

Land means the particulars shown in the corresponding field in the Key Information.

Landcom means Landcom ABN 79 268 260 688 and, to the extent applicable, Landcom's Development Partner.

Landcom's Consultants means all Consultants and former Consultants who have been identified by Landcom during the Market Process who have assisted or are assisting Landcom, either in whole or in part, directly or indirectly, with respect to:

- (a) the Market Process;
- (b) other Landcom projects that are substantially similar to the Market Process; or
- (c) other projects where Landcom is of the reasonable opinion that the information relating to those other projects would or may give the Respondent unfair advantage in this Market Process.

Landcom's Lawyer means the particulars shown in the corresponding field in the Key Information, as varied from time to time.

Landcom's Personnel means all employees, former employees and Landcom's Consultants.

Landcom's Representative means the particulars shown in the corresponding field in the Key Information, as varied from time to time but if none is identified or appointed then it is the Nominated Contact.

Law means any statute, regulation, rule, proclamation, ordinance, by-law or code principles of law established by decisions of courts and approvals.

Loss includes loss, claim, action, damage, liability, cost, charge, expense, penalty, compensation, fine or outgoing suffered, paid or incurred (whether direct or indirect and including any liability arising from fault or negligence).

Market Process means the process of seeking Responses that best satisfies the Project Objectives, which is set out in this document, the Returnable Schedule, the Confidentiality Deed Poll and the Information Memorandum, including all annexures, attachments, schedules and any document referred to or contemplated by any of them including the Disclosure Material.

Mitigation Action means any mitigation measures as may be directed, in its absolute discretion, by Landcom which may include:

- (a) requiring the Respondent to obtain an executed separation protocol deed as shown in Schedule 1 in favour of Landcom from a specific person or company;
- (b) prohibiting a Respondent from using any or a specific person or company in preparation of its Response;
- (c) requesting that a Respondent refrain from any further interaction with a specific person or company until:
 - (i) the Market Process comes to an end; or
 - (ii) the Respondent has been notified by Landcom that it is an Unsuccessful Respondent;
- (d) exclusion of a Respondent from the Market Process; or
- (e) any other actions that Landcom deems appropriate.

Negotiation Points means list of outstanding issues identified by Landcom which Landcom requires to be resolved.

Negotiation Notice has the meaning given to that term in clause 9(a).

Next Stage means the next stage of the Market Process as determined by Landcom, including any terms and conditions for the next stage (which may include this document).

Nominated Contact means the particulars shown in the corresponding field in the Key Information.

Notice includes a notice, demand, consent, approval and other communications and specifically excludes Responses.

Personal Information has all the meaning given in the *Privacy Act 1988* (Cth), the *Health Records and Information Privacy Act 2002* (NSW) and the *Privacy and Personal Information Protection Act 1998* (NSW) and includes 'health information' as defined in the *Health Records and Information Privacy Act 2002* (NSW)

Privacy Laws means:

- (a) the *Health Records and Information Privacy Act 2002* (NSW);
- (b) the *Privacy and Personal Information Protection Act 1998* (NSW);
- (c) the *Privacy Act 1988* (Cth) to the extent that it applies to the Principal; and
- (d) any laws that regulate the handling of Personal Information in Australia or give rise to an actionable right of privacy.

Probity Auditor means the probity auditor appointed for the purposes of the Market Process who at the commencement of the Market Process are the persons as shown in the corresponding field in the Key Information

Project means the project described in the Information Memorandum.

Project Objectives means the objectives for the Project set out in

the Information Memorandum.

Question Closing Time means the particulars shown in the corresponding field in the Key Information.

Question means any question, enquiry, query or request for information with respect to the Market Process or the Project.

Regulatory Clearance includes approval, permit, consent, clearance, endorsement or lack of objection from any:

- (a) Laws;
- (b) Government Authority; or
- (c) any other external governing or regulatory body to which the Respondent is subject to.

Respondent means a party who submits a Response.

Respondent's Personnel means all:

- (a) employees and officers;
- (b) Consultants engaged by a Respondent in relation to the Market Process;
- (c) any other third party proposed in the Response to be involved with the Project.

Response means a Respondent's response to the Market Process and includes any amendments or variations to it and any additional disclosures by the Respondent and:

- (a) if applicable, the Deposit or evidence of payment of the Deposit; and
- (b) any other documents as required to be included as part of the Response as required under the Returnable Schedule.

Returnable Schedule means the returnable schedule for the Market Process, which is a separate document.

Shortlist means the Respondent or the Respondents that will be invited to participate in the Next Stage pursuant to clause 8.3.

Submission Instructions means the particulars shown in the corresponding field in the Key Information.

Successful Respondent means a party that enters into relevant Transaction Documents.

Transaction Document means legally binding document(s) setting out the rights and responsibilities between Landcom (if applicable), the Development Partner (if applicable) and any relevant third party in relation to the Project. The specific nature of the Transaction Documents may vary depending on the form of the proposed financial arrangement in respect of the Project.

Unsuccessful Respondent means a Respondent that has been notified by Landcom in writing that all of the Respondent's Responses are not accepted or excluded or the Respondent is excluded from the Market Process.

2.2 Interpretation

In this document, except where the context otherwise requires:

- (a) this document always takes precedent;
- (b) subject to clause 2.2(a), to the extent of any inconsistency between the Returnable Schedule and this document, the Returnable Schedule prevails to the extent of the inconsistency;
- (c) the singular includes the plural and vice versa, and a gender includes other genders;
- (d) another grammatical form of a defined word or expression has a corresponding meaning;
- (e) a reference to a clause, paragraph, schedule, Key Information or annexure is to a clause or paragraph of, or schedule or Key Information or annexure to, this document, and a reference to this document includes any schedule or annexure;
- (f) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (g) a reference to A\$, \$A, dollar or \$ is to Australian currency;

- (h) a reference to time is to Sydney, Australia time;
- (i) a reference to a party is to a party to this document, and includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (j) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (k) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (l) a reference to an obligation of Landcom in relation to all Respondents does not apply to the extent applicable to Unsuccessful Respondents;
- (m) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this document or any part of them;
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (p) headings are for ease of reference only and do not affect interpretation.

3 MARKET PROCESS PURPOSE

The purpose of the Market Process is to identify a Respondent with a Response that best satisfies the Project Objectives. This document and the Market Process are not offers by Landcom capable of acceptance by a Respondent and, except for legally enforceable obligations on each Respondent, no legal or other obligation, contract, right or relationship will arise between Landcom and a Respondent until Transaction Documents are entered into.

4 DATA ROOM AND DISCLOSURE MATERIAL

4.1 Purpose

Materials that Landcom considers are relevant for Respondents to submit a Response are available in the Data Room.

4.2 Access

Access to the Data Room is subject to Landcom's condition regarding access, from time to time.

4.3 Disclosure Material

- (a) This document and the Disclosure Material comprise statements of intent and opinion, many of which, while based on reasonable assumptions, may or may not be realised or accurate.
- (b) The Disclosure Material is for general informative purposes only and may be subject to statutory and legal requirements, legal documentation and various approvals. Landcom has made the Disclosure Material available in good faith, but does not warrant its accuracy, completeness or suitability for any particular use or transaction. Any proposed concepts, details and proposed project or financial outcomes may vary from time to time due to external factors.
- (c) All quantitative information in the Disclosure Material are approximate only and Respondents must make and rely on their own enquiries as to the accuracy of the quantitative information.

5 MARKET PROCESS BRIEFINGS

- (a) Landcom may, in its absolute discretion, carry out as many or as few briefing sessions that it desires to provide further explanation of the Market Process and/or the Project Objectives any time prior to the Closing Time.

- (b) Landcom is not obliged to provide any briefing sessions under clause 5(a).
- (c) The content of any briefing sessions between a Respondent and Landcom prior to Closing Time may be recorded by Landcom in writing and may be made available to all Respondents.
- (d) Briefing sessions will be undertaken in accordance with any protocols determined by Landcom from time to time.

6 QUESTIONS AND ANSWERS

6.1 Submission of questions

- (a) All Questions must be submitted in writing via the Data Room before the Question Closing Time.
- (b) Landcom is not required to respond to any Question submitted after the Question Closing Time.
- (c) Unless a Question is determined to be a confidential Question pursuant to clause 6.2, all Questions and their corresponding answers will be made available for viewing and access to Respondents.
- (d) Unless a Question is withdrawn, Landcom will endeavour to provide an answer to a Question as soon as reasonably practicable but the timing of the answer will be dependent upon the nature and content of the Question.

6.2 Confidential Questions

- (a) A Respondent may request that a Question and its answer be treated as confidential by including:
 - (i) the words "Confidential Question" at the beginning of the Question; and
 - (ii) its justification as to why that Question should be a confidential Question.
- (b) If Landcom:
 - (i) agrees with the justification, then the Question will be deemed to be a confidential Question and all answers to that confidential Question will only be made available to the respective Respondent; or
 - (ii) does not agree with the justification, Landcom must notify the Respondent of its decision, where such decision is final, and the Respondent may elect either to:
 - (A) withdraw the Question; or
 - (B) request Landcom to answer the Question whereby the answer will be made available for viewing and access to all Respondents.
- (c) If a Respondent does not make an election under clause 6.2(b)(ii) by 5pm on the Business Day after Landcom notifies it that Landcom does not agree with the justification, the Question is deemed to have been withdrawn by the Respondent.
- (d) If subsequent Questions arise from a confidential Question that the Respondent would also like to be treated as a confidential Question, the Respondent must follow clause 6.2(a) with respect to those Questions and the process under this clause 6.2 will apply.

7 RESPONSE

7.1 Submission

- (a) All Responses must be submitted to on or before the Closing Time and in accordance with selected Submission Instructions.
- (b) A Response will only be deemed to be submitted on or before the Closing Time if:
 - (i) for physical submissions, the Respondent receives from Landcom written confirmation:
 - (A) the time and date of the submission of the Response; and

- (B) the number of separate packages forming the Response; and
- (ii) for electronic submissions, the Respondent receives from Landcom written confirmation:
 - (A) the time and date of the submission of the Response; and
 - (B) the number of files (together with the files' name) submitted forming the Response.
- (c) Any issue regarding compliance with clause 7.1(a) must be immediately referred to the Nominated Contact.

7.2 Due diligence

Respondents:

- (a) are responsible for carrying out any investigations in formulating their Response;
- (b) must examine and satisfy itself as to the correctness and sufficiency of the Disclosure Material and any draft Transaction Documents; and
- (c) must satisfy itself of all risks, liabilities, costs, contingencies, planning and approval requirements and other circumstances relating to its Response and the Project.

7.3 Deficiency in Response

Landcom has no obligation to notify the Respondent that any part of its Response is incomplete, missing, unreadable or has not been received.

8 EVALUATION OF RESPONSES

8.1 General

- (a) Landcom will evaluate and assess Responses against the Evaluation Criteria in accordance with the Evaluation Plan, which will not be released to Respondents.
- (b) Unless otherwise specified, the Evaluation Criteria is listed in order of importance.

8.2 Rights and obligations during Evaluation

- (a) Despite anything to the contrary, in carrying out the Evaluation Landcom has the unfettered right to:
 - (i) **(External Information)** take into account:
 - (A) Landcom or any other Government Authority's direct experience with and knowledge of a Respondent or the Respondent's Personnel;
 - (B) any information that the Respondent has provided to Landcom or any other Government Authority;
 - (C) any independently obtained information about the Respondent or the Respondent's Personnel (including by checking references named by the Respondent in its Response); and
 - (D) any other information about the Respondent, the Respondent's Personnel and a Response that is available in the public domain;
 - (ii) **(Clarification)** request any Respondent to:
 - (A) provide clarification with respect to any aspect of its Response; or
 - (B) to satisfy Landcom with respect to any reasonable concerns that the Respondent may not be able to complete and/or fulfil its commitments and/or obligations under its Response,in a format deemed appropriate by Landcom (including meetings or presentations) provided that if the Respondent provides information that substantially or materially varies the Response,

Landcom may disregard that information as part of the Evaluation;

- (iii) **(Additional Information)** request additional information (that is not a clarification under clause 8.2(a)(ii)) from some or all of the Respondents, which may be in the form of a variation to a Response;
 - (iv) **(Inconsistencies)** request additional information (that is not a clarification under clause 8.2(a)(ii)) from a Respondent where the information under clause 8.2(a)(i) is inconsistent with any part of its Response;
 - (v) **(Enhancement)** request some or all Respondents to improve and/or enhance any or all parts of a Response including a 'best and final offer';
 - (vi) **(Due Diligence)** carry out any due diligence on the Respondent that Landcom deems necessary using any third parties;
 - (vii) **(Verification)** seek verification on the accuracy and/or correctness of any part of a Response from any credible sources that it deems appropriate; and
 - (viii) **(Negotiation)** enter into discussions or negotiations with some or all of the Respondents.
- (b) If a Respondent does not respond to a request under clause 8.2(a) on or before the time stipulated by Landcom, the Respondent is deemed to have chosen not to reply and Landcom may take this into account in its Evaluation.
- (c) All Respondents must provide all reasonable assistance, if requested by Landcom, to assist with Landcom's exercise of any of the rights under clauses 8.2(a)(vi) or 8.2(a)(vii).

8.3 Next Stage

At the end of the Evaluation, Landcom may, in its absolute discretion, exercise any of its rights, including under clause 14.

9 NEGOTIATION OF TRANSACTION DOCUMENT

- (a) If a Respondent is invited to negotiate with Landcom, Landcom may issue the Respondent with the Negotiation Points together with any conditions relating to the conduct of the negotiation (collectively the **Negotiation Notice**).
- (b) The Respondent must, within the timeframe specified in the Negotiation Notice:
 - (i) provide any positive acknowledgement required by the Negotiation Notice; and
 - (ii) meet with Landcom as soon as practicable to commence negotiation in good faith with a view to resolve the Negotiation Points.
- (c) The Respondent must not seek to negotiate any matters other than the Negotiation Points.

10 OUTCOME OF MARKET PROCESS

10.1 End of Market Process

The Market Process will be at an end if:

- (a) Landcom and the Successful Respondent/s enters into all relevant Transaction Documents; or
- (b) Landcom declares that the Market Process is at an end.

10.2 Debrief of Unsuccessful Respondents

- (a) An Unsuccessful Respondent is:
 - (i) entitled to request Landcom to provide:
 - (A) an explanation as to why its Response was unsuccessful; and
 - (B) comments and/or feedback regarding how its Response compared to the Project Objectives and/or the Evaluation Criteria; and
 - (ii) not entitled to:

- (A) receive, demand and/or request comments and/or feedback on any parts of the Response where Landcom did not Evaluate;
 - (B) information about how its Response compared to any other Response to the Market Process; or
 - (C) details of any other Responses; or
 - (D) any redress against Landcom for being an Unsuccessful Respondent; or
 - (E) any redress or Claim against Landcom as a result of Landcom exercising any or all of its rights under this document; or
 - (F) any Claims against Landcom for any costs or expenses arising from participation in the Market Process.
- (b) Landcom may, in its absolute discretion, determine the format of its response following a request under clause 10.2(a)(i).
- (c) Nothing in this clause 10.2 requires Landcom to do anything:
- (i) which would jeopardise or cause delay to the Market Process; or
 - (ii) before the end of the Market Process.

11 RESPONDENT'S WARRANTIES AND REPRESENTATIONS

11.1 Own risk

All Respondents knowingly participate in the Market Process at their own cost and risk.

11.2 No representations from Landcom

Unless otherwise specified in this document, Landcom makes no representation in relation to the accuracy or completeness of documents or information provided by Landcom relating to the Market Process.

11.3 Irrevocable Offer

Despite anything to the contrary, each Response is:

- (a) an irrevocable offer by the Respondent to enter into Transaction Documents on the terms of the Response;
- (b) must not be withdrawn by the Respondent before the Acceptance Date without Landcom's prior written consent (which may be withheld or given subject to conditions in Landcom's absolute discretion); and
- (c) an agreement by the Respondent to be bound by this document.

11.4 Breach or Withdrawal of Response

- (a) If a Respondent:
 - (i) breaches a term of this document; or
 - (ii) either withdraws from the Market Process or withdraws any of its Responses before the Acceptance Date without Landcom's prior written consent (which may be withheld or given subject to conditions in Landcom's absolute discretion),
without limiting Landcom's entitlement to make a claim for Losses suffered, Landcom may:
 - (iii) if clause 13 applies, retain the Deposit; or
 - (iv) if clause 13 does not apply, make a claim for an amount of damages equivalent to 10% of the deposit which would have been payable by a Respondent under the Transaction Documents if the Respondent's offer had been accepted by Landcom.
- (b) Respondents acknowledge that the Deposit or amount specified in clause 11.4(a)(iv) is fair and reasonable compensation for Landcom's costs, time and effort

expended by Landcom arising from the Respondent's participation in the Market Process.

11.5 Validity

Despite anything to the contrary, all Responses must be open for acceptance and the Respondent must participate in negotiations with respect to its Response until the earlier of:

- (a) the Acceptance Date;
- (b) the date that the Market Process is at an end; and
- (c) the date that Landcom notifies the Respondent it is an Unsuccessful Respondent.

11.6 Accurate and continuous disclosure

- (a) Each Respondent warrants that, to the best of its knowledge, its Response is accurate and complete as at the Closing Time and does not contain any false or misleading statements irrespective of the impact.
- (b) If after the Closing Time but before the end of the Market Process, any part of a Response becomes inaccurate or incomplete due to a change in circumstances (irrespective of the impact), the Respondent must immediately notify Landcom of:
 - (i) the change in circumstances;
 - (ii) the part of the Response which has become inaccurate or incomplete; and
 - (iii) the impact, if any, to the Response.

11.7 No clearance requirement

- (a) A Respondent and its Response must:
 - (i) not be subject to any Regulatory Clearance; and
 - (ii) include one of the documentations as set out in the Key Information in respect of FATA.
- (b) Landcom notes that Regulation 31 of the *Foreign Acquisition and Takeovers Regulation 2015* (Cth) may apply to this Market Process and the proposed Transaction Document. The Respondent must rely on its own investigations in deciding whether the Respondent requires approval under FATA in connection with the Market Process and the proposed Transaction Document.

11.8 Intellectual Property

Landcom will be entitled to retain the Response (including models and drawings) and all correspondence and other materials received from or on behalf of the Respondent.

12 RESPONDENT'S CONDUCT

12.1 Conflict of interest

Respondents must:

- (a) immediately advise Landcom of any Conflict of Interest; and/or
- (b) promptly undertake Mitigation Action as directed by Landcom.

12.2 Offers of employment

Until a Respondent becomes an Unsuccessful Respondent or a Successful Respondent, a Respondent or any member of the Respondent's Personnel must:

- (a) not approach, entice, solicit or make an offer of employment to any Excluded Individual; and
- (b) immediately:
 - (i) notify Landcom of any acceptance of an offer of employment made to any of Landcom's Personnel who are not Excluded Individuals; and
 - (ii) put into place any Mitigation Actions as directed by Landcom.

12.3 Use of Landcom's Consultants

A Respondent must not approach or engage any of Landcom's Consultants without Landcom's prior written consent. In giving consent, Landcom may require Mitigation Actions.

12.4 Liability for Mitigation Actions

Despite anything to the contrary, Landcom will not be:

- (a) liable for any cost expended by the Respondent; or
- (b) required to grant the Respondent any extension of Closing Time as a result of any delays,

in implementing any Mitigation Actions.

12.5 Improper assistance and collusive behaviour

All Respondents and the Respondent's Personnel:

- (a) must not engage in any collusive bidding or anti-competitive conduct with any person, or any other unethical, improper or unlawful conduct in relation to the Market Process or a Response; and
- (b) must not:
 - (i) request, demand, induce or solicit improper assistance from any person;
 - (ii) use information obtained unlawfully, unethically or in breach of an obligation of confidentiality to any person,

in relation to the Market Process or formulating a Response.

12.6 No contact with Landcom

A Respondent and the Respondent's Personnel must not communicate or procure a third party to communicate with Landcom or Landcom's Personnel with respect to the Market Process except in accordance with clauses 6 and 15.2.

12.7 No contact with NSW Government Authority

A Respondent and the Respondent's Personnel must not directly or indirectly communicate with, lobby or improperly interfere or solicit:

- (a) Landcom and Landcom's Consultant;
- (b) Landcom's Personnel unless expressly provided for in this document;
- (c) the government of New South Wales;
- (d) any Minister of the government of New South Wales and its respective advisers;
- (e) any public servants; or
- (f) any Government Authority;

to influence (or attempt to influence) the outcome of the Market Process.

12.8 No contact with a media outlet

A Respondents and the Respondent's Personnel must not communicate with any company, organisation or individual that publishes or disseminates information or commentary through any media channel including newspapers, television, radio or any IT platform including any form of social media to:

- (a) influence (or attempt to influence) the outcome of the Market Process; and
- (b) discuss the Market Process, the preparation of a Response or any other element of the Market Process.

12.9 Change in Respondent/change in Control

If at any time before the end of the Market Process, the Respondent proposes to:

- (a) substitute another legal entity to take over a Response of the original Respondent;
- (b) assign the Response to another legal entity;
- (c) if the Respondent is a trustee of a trust, change or vary the trustee of the trust or the composition, ownership or

shareholding of the trustee such that there is a change in Control of the trustee from the Closing Time;

- (d) change or vary the composition, ownership or shareholding of the Respondent such that there is a change in Control of the Respondent from the Closing Time; or
- (e) change or vary any member of Respondent's Personnel, it must obtain Landcom's written consent which may be granted with or without conditions, in Landcom's absolute discretion.

12.10 Conduct during suspension

If a Respondent is suspended from the Market Process, then:

- (a) the Respondent is not entitled to any extension of time due to the suspension; and
- (b) if the suspension is in place at the Closing Time, any Response submitted by the Respondent will be automatically excluded from Evaluation and the rights under clause 10.2 do not apply.

13 DEPOSIT

- (a) This clause 13 applies if a Deposit is required in the Key Information.
- (b) Each Respondent must pay the Deposit on or before the Closing Time in accordance with the Deposit Payment Method. If a Respondent submits multiple Responses, only one Deposit is required.
- (c) Landcom has no obligation to invest or pay interest on the Deposit.
- (d) Except where the Deposit is forfeited under clause 11.4(a), Landcom will promptly return the Deposit to an Unsuccessful Respondent.
- (e) If Landcom enters into Transaction Documents with a Respondent, the Deposit provided by that Respondent will be applied towards payments required under the Transaction Documents.
- (f) If there is a dispute relating to the Deposit, Landcom may pay all disputed moneys into the Supreme Court of New South Wales. The Respondent releases Landcom from any Claim related to a payment under this clause 13(f).

14 LANDCOM'S RIGHTS

In addition to its rights set out elsewhere in this document, Landcom has the unfettered right without giving reasons to:

- (a) at any time before the Closing Time, extend the Closing Time by notice to potential Respondents;
- (b) at any time before the Acceptance Date, extend the Acceptance Date by notice to the Respondents;
- (c) at any time, exclude any Response from the Market Process if:
 - (i) the Response is not submitted strictly in accordance with clause 7.1;
 - (ii) Landcom believes that the Response:
 - (A) is incomplete; or
 - (B) is inadequate to allow for a proper Evaluation; or
 - (C) would not meet the Project Objectives; or
 - (D) is not generally on terms which are consistent with the Market Process; or
 - (E) would result in a Conflict of Interest and such Conflict of Interest cannot be mitigated to Landcom's absolute satisfaction; or
 - (F) there is a marginal probability of a successful outcome; or
 - (iii) Landcom has Evaluated any part of the Response and:

- (A) has Evaluated at least one of the Evaluation Criteria as a low standard, marginal or with a score of “4” out of “10” or less; or
- (B) considers that the Response represents a moderate to high risk to Landcom;
- (d) at any time, suspend a Respondent from the Market Process:
 - (i) due to a Conflict of Interest until such time:
 - (A) the Respondent has implemented the Mitigation Action to the satisfaction of Landcom; or
 - (B) Landcom removes the suspension; or
 - (ii) due to a breach of a term of this document until such time that breach is remedied or waived by Landcom.
- (e) at any time, exclude a Respondent from the Market Process:
 - (i) if the Respondent has breached a term of this document;
 - (ii) if Landcom believes that the Respondent does not have appropriate experience or capability to deliver the Project Objectives;
 - (iii) with or without cause; or
 - (iv) if there is a Conflict of Interest with the Respondent and such Conflict of Interest cannot be mitigated to Landcom’s absolute satisfaction.
- (f) Evaluate a Response that it is entitled to exclude;
- (g) before the Closing Time, vary the information that is required in a Response;
- (h) not negotiate or proceed with any Responses submitted under the Market Process or any other things referred to or contemplated by the Market Process;
- (i) at any time, withdraw from negotiations with a Respondent;
- (j) at any time, negotiate with any other person with a view to enter into Transaction Documents;
- (k) determine a Next Stage and/or a Shortlist;
- (l) at any time, divide the Market Process and/or the Project into parts and deal with each part separately and/or with separate Respondents;
- (m) at any time, suspend, amend or end the Market Process (including by amending any document relating to the Market Process);
- (n) provide Respondents with additional information; or
- (o) refer a Respondent to the relevant Government Authority if Landcom is of the view that a conduct of a Respondent breaches any Laws.

15 ALL COMMUNICATIONS

15.1 Language

All Responses and all other communication from a Respondent must be in English.

15.2 From Respondents

Subject to clause 6, all communications concerning the Market Process must be made via the Nominated Contact or as otherwise notified by Landcom from time to time.

15.3 From Landcom

A Notice from Landcom regarding the Market Process may be issued by Landcom:

- (a) before the Closing Time, via the Data Room; or
- (b) at any time, via the contact details provided by a Respondent from time to time including those provided in a Response.

15.4 Joint Response

If a Respondent is comprised of two or more persons, any notice, order, direction, request or other communication which Landcom must or may give to a Respondent will be deemed to be properly given to all persons of the Respondent if given to any one or more of those persons.

15.5 Respondent responsibility

It is the responsibility of Respondents to regularly check the Data Room for Notices.

15.6 Effective on receipt

A Notice given in accordance with this clause 15 takes effect at the following times:

- (a) if given via the Data Room, at 9:00am on the next Business Day;
- (b) if given by email, at the time that the email is sent unless, within four hours of sending the email, the party sending the email receives an automated message that the email has not been delivered;
- (c) if hand delivered, on delivery; and
- (d) if posted, which must be by express post, two Business Days after the date of posting,

but if the Notice takes effect on a day that is not a Business Day or is after 5:00pm on a Business Day, the Notice is taken to take effect at 9:00am on the next Business Day.

16 NSW GOVERNMENT AUTHORITY REQUIREMENTS

16.1 Recordkeeping

Responses will be stored by Landcom in accordance with the requirements of the *State Records Act 1998* (NSW) and/or the Privacy Laws.

16.2 Government Authority Information (Public Access) Act 2009

Responses may be:

- (a) recorded in the register of the Government contracts which is published on the NSW Government Responses Website; and
- (b) released to third parties pursuant to the Government Authority Information (Public Access) Act 2009 (NSW),

and neither Landcom, Landcom’s Personnel nor the NSW Government will be liable for the disclosure of any part of the Response under this clause 16.2.

17 MISCELLANEOUS

17.1 Dispute

If there is a dispute regarding the integrity of the Market Process, Landcom will, at its cost, request the Probity Auditor (or, if one is not engaged, an independent third party) to provide a determination on the integrity of the Market Process and such finding will be final.

17.2 Governing law and jurisdiction

This document and the Market Process are governed by the laws of New South Wales. The Respondent irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.

17.3 Disclaimer

- (a) To the maximum extent permitted by Law, Landcom and Landcom’s Personnel are not liable for any Loss incurred by a Respondent as a result of its reliance on any incorrect or misleading information or a failure by Landcom to disclose information whether in connection with the Market Process or at any other time. No obligation is imposed on Landcom to advise any Respondent of any future information of which it becomes aware or any change to, or any error in, the Disclosure Material.
- (b) No information, disclaimer, statement of rights or obligations or any other limitation or restriction contained

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in this document or the Disclosure Material or related to the Market Process is intended to inform, or should be read as informing, any person of their legal rights.

- (c) Respondents must seek their own legal, financial and other advice, and must rely entirely on their own enquiries about all aspects of the Market Process, including whether and how to participate and the likely outcomes and effects.

SCHEDULE 1 SEPARATION PROTOCOL DEED POLL

The Deed Poll is made by:

Name	#Insert# (Provider)
Choose an item.	#Insert ABN/ACN#
Notice details	#Insert address# Email: #Insert# Attention: #Insert#

in favour of:

Name	Landcom
ABN	79 268 260 688
Notice details	Level 14, 60 Station Street East, Parramatta NSW 2150 Email: #insert# Attention: #Insert#

AGREED TERMS

The Provider acknowledges and covenants as follows:

- 1 In this Deed Poll:
 - (a) **Affected Personnel** means all people engaged or employed by the Provider who were involved in providing Landcom Services, either directly or indirectly;
 - (b) **Landcom Services** means any work done, either in whole or in part; directly or indirectly, for the benefit of:
 - (i) the Market Process;
 - (ii) other Landcom projects that are substantially similar to the Market Process; or
 - (iii) other projects where Landcom is of the reasonable opinion that the information relating to those other projects would or may give the Respondent unfair advantage in this Market Process.
 - (c) **Landcom Services Agreement** means the arrangement or agreement between Landcom and the Provider for the Provider to carry out the Landcom Services;
 - (d) **Terms and Conditions** means the document that sets out the terms and conditions for the Market Process of the project described on the cover of this document,
- and:
 - (e) unless otherwise defined, expressions defined in the Terms and Conditions have the same meaning in this Deed Poll;
 - (f) unless otherwise indicated, rules of interpretation set out in the Terms and Conditions applies to this Deed Poll; and
 - (g) to the extent of any inconsistency between this Deed Poll and the Terms and Conditions (except for Part 4 Terms and Conditions), this Deed Poll prevails to the extent of the inconsistency.
- 2 All Affected Personnel have a legal obligation to keep all information relating to Landcom Services (whether physical or electronic version) that are not in the public domain confidential (**Confidential Information**).
- 3 (**Preparing a Response**) The Provider covenants that it will ensure no Affected Personnel are involved in assisting or undertaking any work, either directly or indirectly, in the Provider's preparation of a Response to the Market Process.
- 4 (**Assist in the preparation of a Response**) The Provider covenants that it will ensure:
 - (a) no Affected Personnel are involved in assisting or undertaking any work in assisting any third party,
- either directly or indirectly, in preparing a Response to the Market Process;
- (b) to implement appropriate separation barrier arrangements and associated security protocols so that all:
 - (i) physical Confidential Information are locked away; and
 - (ii) electronic Confidential Information are securely stored on devices approved by the Provider with appropriate password protection,
 so that they are only accessible by Affected Personnel and no one else.
- (c) all meetings, conferences, teleconferences with respect to Landcom Services:
 - (i) are conducted in a secure environment where the content of the meeting, conference, teleconference cannot be overheard or seen by any other person; and
 - (ii) are commenced by asking each attendee whether it is aware of any:
 - (1) breaches of the Provider's obligations under this Deed Poll; or
 - (2) potential conflict of interest,
 where such confirmation is to be minuted.
- (d) that all of its electronic devices are password protected and password access is required after two minutes of inactivity or when the person is away from its electronic device;
- (e) all printings of Confidential Information are:
 - (i) done through secure printing so that no other person can have access to the printed information; and
 - (ii) collected and secured stored;
- (f) to immediately notify Landcom should:
 - (i) there be any breach of any of its obligations under this Deed Poll; or
 - (ii) it be legally required to disclose any Confidential Information to any third parties; and
- (g) to immediately return or destroy all Confidential Information to Landcom at the request of Landcom.
- 5 The Provider unconditionally acknowledges and undertakes that:
 - (a) it will strictly comply with the terms of this Deed Poll and introduce a culture of ensuring that all of its personnel understand and complies with all arrangements and protocols established by the Provider under this Deed Poll;
 - (b) Landcom or its authorised representative may at any time audit the Provider's strict compliance with

- this Deed Poll including but not limited to visit to the Provider's office and access to Provider's electronic devices, computer system and file storage system. The Provider will provide all access and assistance necessary with the audit; and
- (c) despite any other arrangement or agreement, if Landcom suspects there has been any breach (whether actual, potential or perceived) of this Deed Poll, Landcom may:
- (i) direct the Provider to immediately cease Landcom Services, despite anything to the contrary including the Landcom Services Agreement, and upon receipt of such direction:
- (1) the Landcom Services Agreement shall be deemed at an end by mutual agreement between the parties without prejudice to any existing rights that either party may have

- against the other party under the Landcom Services Agreement;
- (2) the Provider shall be entitled to payment for any Landcom Services performed by the Provider under the Landcom Services Agreement up to the date of the direction; and
- (3) the parties must timely carry out all obligations in the Landcom Services Agreements regarding either party's obligations when the agreement is at an end;
- (ii) exclude the Provider from submitting a Response and should the Provider still submit a Response such Response will not be Evaluated; and/or
- (iii) direct the Provider to immediately cease assisting any third party in preparing a Response and notify all relevant parties regarding such direction.

Executed by the Provider as a Deed Poll.

Dated _____ day of _____ 20____.

#execution by 1 x director and 1 x directors/secretary#

Executed by #insert# in accordance with Section 127 of the *Corporations Act 2001* in the presence of:

Signature of director ←

Signature of director/company secretary
(Please delete as applicable) ←

Name of director (print)

Name of director/company secretary (print)

#execution by sole directors/secretary#

Executed by #insert# in accordance with Section 127 of the *Corporations Act 2001* in the presence of:

Signature of sole director/company secretary ←

Name of sole director/ company secretary (print)

#execution under power of attorney#

Signed for #insert# by its power of attorney #insert# pursuant to power of attorney dated #insert#:

Signature of witness ←

Signature of officer ←

Name of witness (print)

Name of officer (print)

#execution by an authorised officer#

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Signed for #insert# by an authorised officer in the presence of

_____ ←

Signature of witness

Name of witness (print)

_____ ←

Signature of officer

Name of officer (print)

Office held

#execution by an individual#

Signed by #insert#

_____ ←

Signature of witness

Name of witness (print)

_____ ←

Signature